TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~1552~~ 979

MICHAEL SCHWAB, APPELLANT,

vs.

A. W. BERGGREN, WARDEN OF THE PENITENTIARY OF THE STATE OF ILLINOIS, AT JOLIET.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 10, 1890.

as described by him, there is not and cannot be any pretence that it was known to any human being prior to such discovery, nor any pretence that it constituted part of the blanket deposit or contact described by the other witnesses, and which outcropped at considerable distances outside of the boundaries of the placer and, so far as developed, dipped at an angle of from eight to fifteen degrees in the direction of the ground covered by the placer. Sullivan testified that the purpose of his location and the sinking of his shaft was to reach that contact or deposit which he estimated would be found at the depth of two hundred and ninety feet below the bottom of his shaft, or four hundred feet from the surface.

The testimony of Leonhardy, Baldwin and Bulkley fails to establish anything like actual knowledge on the part of the placer patentees or Mr. Stevens of the existence of the blanket vein or contact within the boundaries of the placer. It was all mere geological conjecture or speculation on the part of Mr. Stevens and others from which no actual knowledge can be inferred. It is true that Baldwin says the flat deposit or contact had been struck in the shaft of the Summit claim within the boundaries of the placer, a matter about which he was evidently mistaken, but whether mistaken or not, one which he never communicated to Mr. Stevens or any one else interested in the entry or purchase of the placer.

But if the contact vein or deposit, between porphyry and blue lime, passing nearly horizontally into the placer several hundred feet beneath its surface, and having no top or apex within its boundaries, had been known to Mr. Stevens or the placer patentees to exist, it was not within the exceptions of the placer patent, nor of the law of Congress authorizing such exception. This is a question to be more fully discussed in *The Iron Silver Mining Company vs. Campbell et al.*, on the present calendar, and to which we beg to refer.

These propositions, based upon the evidence and the law, if found to be correct, must necessarily lead to an affirmance of the judgment.

L. S. DIXON,
For Defendant in Error.

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INDEX.

	Original.	Print.
Caption	1	1
Bond for costs	2	1
Petition for writ of *habeas corpus*	3	1
Exhibit A—Order of Governor Oglesby commuting the sentence to imprisonment for life	15	8
Exhibit B—Letter of Governor Oglesby to the warden of the penitentiary, November 10, 1887	17	9
Exhibit C—Judgment of the supreme court of Illinois	19	9
Notice of motion for writ of *habeas corpus*	22	11
Demurrer to petition	25	13
Order taking demurrer under advisement and granting leave to amend petition	28	14
Amendment to petition	29	15
Judgment	30	15
Allowance of appeal	30	15
Bond	31	15
Stipulation to amend petition	33	16
Exhibit D—Judgment of criminal court of Cook county	34	17
Clerk's certificate	38	18
Assignment of errors	39	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 14, 1891.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh judicial circuit, on Tuesday, the seventh day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, *Clerk.*

In the Matter of the Petition of MICHAEL SCHWAB for a Writ of *Habeas Corpus.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-fifth day of September, 1890, came the petitioner, by his attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs and petition for a writ of *habeas corpus* in said entitled cause; which said petition was refiled, as amended, October 7, 1890, by leave of court. Said bond and petition are in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, Northern Division, }

Circuit Court. July Term, A. D. 1890.

In Re the Petition of MICHAEL SCHWAB for a Writ of *Habeas Corpus*
vs.
A. W. BERGGREN, Warden, etc. } In Law.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the petitioner of any costs ordered or adjudged to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 25th day of September, A. D. 1890.

MOSES SALOMON,
116 *La Salle St.*

(Endorsed:) Filed Sept. 25, A. D. 1890. Wm. H. Bradley, clerk.

3 UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the Northern District of Illinois Thereof. —— Term, A. D. 1890.

To the honorable justice of the said court:

The petition of Michael Schwab respectfully represents that he is a subject of the King of Germany, and further shows that he is un-

lawfully detained and imprisoned and kept at hard labor in the penitentiary at Joliet, Will county, in the State of Illinois, by A. W. Berggren, acting and officiating as warden of the penitentiary of the State of Illinois, situated at the place aforesaid; that the only claim set out for the detention and imprisonment of your petitioner by said Berggren, as claimed by said Berggren, is contained in the papers hereto attached and marked Exhibits A, B, and C, copies of which have been asked for and furnished to your petitioner, said Berggren not pretending to detain your petitioner by virtue of any other warrant therefor. Petitioner has requested and demanded of said Berggren that he set at liberty your petitioner and no longer keep him at hard labor and restrained of his liberty; but said Berggren has refused so to do, but still keeps your petitioner in imprisonment and at hard labor.

Petitioner further shows that he is not held or detained by said Berggren by virtue of any judgment, order, or decree given by or issued out of any court of the United States or by virtue of
4 any valid authority, judgment, order, or decree of any court of the State of Illinois.

Petitioner further shows that the authority under and by virtue of which said Berggren detains your petitioner in imprisonment, hereinabove referred as "Exhibit A," shown to your petitioner by a certified copy furnished by said Berggren, is in the words and figures following, to wit:

"STATE OF ILLINOIS, }
Executive Department. }

Richard J. Oglesby, Governor of Illinois, to Canute R. Matson, sheriff of Cook county, Illinois, Greeting:

Whereas Michael Schwab was convicted, at the June term, A. D. 1886, of the criminal court of Cook county, of the crime of murder and was sentenced therefor to be hanged; and whereas it has been represented to me by divers good citizens of said county that said Michael Schwab is a fit and proper subject for executive clemency:

Now know ye that I, Richard J. Oglesby, Governor of Illinois, by authority in me vested by the constitution of this State, do by these presents commute the sentence of the said Michael Schwab to imprisonment in the penitentiary for life.

In testimony whereof I hereto set my hand and caused to be affixed the great seal of State.

Done at the city of Springfield this tenth day of November, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL OF STATE.] (Sig.) RICHARD J. OGLESBY,
Governor.

By the Governor:
HENRY D. DEMENT,
Secretary of State.

5 Executed by delivering the body of the within-named defendant to the warden of the penitentiary at Joliet this 12th day of November, 1887.

(Sig.) CANUTE R. MATSON, *Sheriff*,
By W. H. GLEASON, *Deputy*."

Petitioner further shows and represents unto your honor that said claimed authority and the detention and imprisonment and keeping at hard labor of petitioner is in violation of the laws and constitution of the United States and of the State of Illinois, and is wholly and entirely insufficient cause for the detention and confinement in imprisonment of your petitioner by said Berggren for the following reasons:

A. Said writing is not directed to said Berggren.

B. Said writing does not authorize said Berggren to detain your petitioner in imprisonment.

C. Said writing does not specify nor direct the imprisonment of your petitioner in any penetntiary in the State of Illinois.

D. Said writing does not and did not give warrant or authority to Canute R. Matson, sheriff of Cook county, Illinois, to deliver the body of petitioner into the custody and keeping of said Berggren or to the warden of the penitentiary at Joliet.

E. Said writing does not impose upon petitioner or cantain the condition that he be kept at hard labor.

F. Said writing does not run in the name of the people of the State of Illinois, as required by the constitution of the State of Illinois, wherein it is provided, article 6, section 33, "All process shall run in the name of the people of the State of Illinois."

6 Your petitioner further shows that on the 5th day of May, A. D. 1886, he was arrested, while in the city of Chicago, county of Cook and State of Illinois, and locked up and confined in a cell in the county jail of Cook county aforesaid, said jail being situated in the city of Chicago, county and State aforesaid, and thereafter, on or about the 4th day of June, A. D. 1886, he was charged with the crime or murder; and that thereafter, on the 5th day of June, A. D. 1886, petitioner pleaded not guilty to said indictment; and petitioner states and charges that in truth and fact he was not and never had been guilty of said charge of murder.

Petitioner further states that such proceedings were had that said cause came on to be heard in the supreme court of the State of Illinois, in the northern grand division thereof, at the city of Ottawa, State of Illinois, and the same having been argued and submitted to the court, thereafter and on or about the 14th day of September, A. D. 1887, petitioner is informed and believes, the supreme court of the State of Illinois entered and passed a certain sentence of death upon this petitioner, therein and thereby sentencing petitioner to death and fixing the date when he was to be executed on the 11th day of November, A. D. 1887, as will more fully appear from a copy of said sentence of death, hereto annexed and marked "Exhibit C," and is the words and figures following, viz:

At a supreme court begun and held at Ottawa on Tuesday, the 6th day of September, in the year of our Lord one thousand eight hundred and eighty-seven, within and for the northern grand division of the State of Illinois.

7 Present: Benj. R. Sheldon, chief justice; John M. Scott, justice; John H. Mulkey, justice; Simeon P. Shope, justice; John Schofield, justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; George Hunt, attorney general; Lawrence Morrisy, sheriff; Alfred H. Taylor, clerk.

WEDNESDAY, *September* 14.

Present: Full bench, except Mr. Justice Scott.

Be it remembered that afterwards, to wit, on the 14th day of September, A. D. 1887 (the same being one of the regular days of said term of court), the following proceedings were by said court had and entered of record, to wit:

AUGUST SPIES, MICHAEL SCHWAB, SAMUEL Fielden, Albert R. Parsons, Adolph Fischer, George Engel, Louis Lingg, and Oscar W. Neebe *vs.* THE PEOPLE OF THE STATE OF ILLINOIS.	59, A. D. *Prior* to the Criminal Court of Cook County.

On this day came again the said parties, and the court having diligently examined and inspected, as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record nor proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious, or defective, and that that record is no error:

Therefore it is considered by the court that the judgment
8 aforesaid be affirmed in all things as to each and every of said plaintiffs in error and stand in full force and effect, notwithstanding the said matters and things therein assigned for error.

And it is further ordered by the court that the eleventh day of November, A. D. 1887, be, and the same is hereby, fixed as the time when the sentence of death pronounced upon said plaintiffs in error, August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel, and Louis Lingg, by the criminal court of Cook county, Illinois, shall be executed.

And it is further ordered by the court that the sheriff of Cook county, Illinois, be, and he is hereby, ordered and directed to carry into execution the sentence by the criminal court of Cook county, Illinois, of the defendants in the indictment, August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel, and Louis Lingg, on Friday, the eleventh day of November next (November 11, A. D. 1887), between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of that day.

And it is further considered by the court that the said defendants

in error recover of and from the said plaintiffs in error their costs by them in this behalf expended, and that they have execution therefor.

STATE OF ILLINOIS,
Supreme Court, Northern Grand Division, } ss:

I, Alfred H. Taylor, clerk of the supreme court in and for
9 the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the final order in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Ottawa, this 12th day of November, in the year of our Lord one thousand eight hundred and eighty-seven.

(Sig.) A. H. TAYLOR,
Clerk of the Supreme Court.

[Seal of Supreme Court.]

Petitioner further says and charges that at the time when said sentence of death was pronounced he was and had been continuously confined as a prisoner in the county jail of Cook county, situated in the city of Chicago, county of Cook, and State of Illinois, from the 7th day of May, A. D. 1886, to and including the 12th day of November, A. D. 1887, by the sheriff and keeper of the jail of Cook county, and at no time appeared personally and bodily at the supreme court of the State of Illinois, in the northern grand division thereof, at Ottawa, or in any other division of said supreme court, and the recital in said sentence, "On this day came again the said parties," meaning and intending thereby that this petitioner, Michael Schwab, impleaded with others in said judgment mentioned, was personally and bodily present at the time when said judgment was pronounced, is false and untrue; and this petitioner hereby offers to prove that he was not personally and bodily present at said time; and petitioner states and charges that he was not present at said time, nor was he represented by counsel or notified to be present, either in per-
10 son or by counsel; and petitioner further shows that so far as the said sentence of death by the said supreme court is claimed by said Berggren, or the warden of the penitentiary at Joliet, as authority for detaining your petitioner in imprisonment and keeping him at hard labor under said authority, the same is in violation of the laws and Constitution of the United States and is in violation of the laws and constitution of the State of Illinois and is insufficient and ineffectual warrant for the detention of petitioner for the reasons following:

1. Said sentence was wholly and entirely null and void for want of jurisdiction of the person of your petitioner by the said supreme court of the State of Illinois. Petitioner further claims and insists that by the law of the land, as established for more than 700 years, and was the law in force in Illinois at the time said sentence of death was pronounced, and was also the law of the United States, that before the sentence of death can be legally passed upon him so as to

subject him to the penalties thereof he must be brought personally and bodily into the presence of the court so pronouncing sentence of death against him, and he must be asked if he hath anything to say why sentence of death should not be passed upon him, and the pronouncing of a sentence of death in his absence and without asking him if he hath anything to say is wholly and entirely void and of no effect.

2. The sentence is not sufficient warrant or authority for the detention and imprisonment and keeping at hard labor of your petitioner for the further reasons:

A. The said judgment and sentence confers no authority on the sheriff of Cook county to deliver the body of petitioner into the custody of said Berggren, as warden of the penitentiary.

11 B. No authority is given or pretended to be given to said Berggren or the warden of the penitentiary at Joliet by said judgment and sentence to confine your petitioner.

C. Said judgment and sentence confers no authority on said Berggren or the warden of the penitentiary at Joliet to confine your petitioner and keep him at hard labor in said penitentiary.

D. The copy of said judgment and sentence is insufficient authority for the sheriff to deliver or said Berggren or the warden of the penitentiary at Joliet to detain and imprison your petitioner, because the same does not run in the name of the people of the State of Illinois, as required by the constitution of the State of Illinois, article 6, section 33.

E. Petitioner claims copy of said judgment and sentence is otherwise insufficient authority for the detention and imprisonment of your petitioner.

Petitioner further states and charges that no one or all of either of said writings as pretended authority for the detention and imprisonment and keeping at hard labor of your petitioner by said Berggren are good and valid for that purpose, but your petitioner states and charges that each and every of said writings as pretended authorities for the detention and imprisonment and keeping at hard labor of your petitioner by said Berggren *is* null and void and contrary to and in violation of the laws and constitution of the State of Illinois, and also contrary to and in violation of the laws and Constitution of the United States.

Wherefore petitioner prays that a writ of *habeas corpus* may issue, directed to the said A. W. Berggren, warden of the
12 penitentiary at Joliet, Will county, Illinois, directing and commanding him to forthwith produce the body of your petitioner before this honorable court and abide the order of the court therein.

And your petitioner further prays that he may be allowed to give evidence, and he hereby offers to prove the allegations in this petition*er* set forth, and that he was not present personally and bodily at the time said pretended sentence of death was pronounced by the supreme court, on the 14th day of September, A. D. 1887, and that he was not notified to be present, either in person or by attorney,

at the time it is recited in said record sentence of death was passed on petitioner, and that he was not present.

Petitioner further prays that order be entered ordering and directing the discharge of your petitioner from the imprisonment at hard labor from which he is now suffering, and that your petitioner be set at liberty.

And this your petitioner will ever pray.

MICHAEL SCHWAB,
By MARY SCHWAB.
MICHAEL SCHWAB.

M. SALMON,
Attorney for Petitioner.
BENJ. F. BUTLER, *Of Counsel.*

13 UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the Northern District of Illinois Thereof. —— Term, A. D. 1890.

Ex Rel. MICHAEL SCHWAB
vs.
A. W. BERGGREN.

Michael Schwab, being on oath first duly sworn, deposes and says that he is the relator in the foregoing petition; that he has read the above and foregoing petition and knows the contents thereof; that the same is true in all respects except as to the allegations therein contained stated upon information and belief, and as to those allegations affiant believes it to be true.

MICHAEL SCHWAB.

Subscribed and sworn to by Michael Schwab before me this 4th day of October, A. D. 1890.

GALLUS MÜLLER,
[SEAL.] *Notary Public.*

14 UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the Northern District of Illinois Thereof. —— Term, A. D. 1890.

Ex Re. MICHAEL SCHWAB
vs.
A. W. BERGGREN.

Maria Schwab, being on oath first duly sworn, deposes and says that she is the wife of the relator in the foregoing petition; that she has read the above and foregoing petition and knows the contents thereof; that the same is true in all respects except as to the allegations therein contained stated upon information and belief, and as to those allegations affiant believes it to be true.

MARY SCHWAB.

Subscribed and sworn to by Maria Schwab before me this 20th day of September, A. D. 1890.

HENRY MEISELBAR,
[SEAL.] *Notary Public.*

15 EXHIBIT "A."

STATE OF ILLINOIS, }
Executive Department. }

Richard J. Oglesby, Governor of Illinois, to Canute R. Matson, sheriff of Cook county, Illinois, Greeting:

Whereas Michael Schwab was convicted at the June term, A. D. 1888, of the criminal court of Cook county of the crime of murder and was sentenced therefor to be hanged; and whereas it has been represented to me by divers good citizens of said county that said Michael Schwab is a fit and proper subject for executive clemency:

Now know ye that I, Richard J. Oglesby, Governor of Illinois, by authority in me vested by the constitution of this State, do by these presents commute the sentence of the said Michael Schwab to imprisonment in the penitentiary for life.

In testimony whereof I hereto set my hand and cause to be affixed the great seal of State.

Done at the city of Springfield this 10th day of November, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL OF STATE.] (Sig.) RICHARD J. OGLESBY,
Governor.

By the Governor:
(Sig.) HENRY D. DEMENT,
Secretary of State.

Executed by delivering the body of the within-named defendant to the warden of the penitentiary at Joliet this 12th day of November, 1887.

(Sig.) CANUTE R. MATSON, *Sheriff,*
16 By W. H. GLEASON, *Deputy.*

WARDEN'S OFFICE, ILLINOIS STATE PENITENTIARY,
JOLIET, *May* 2, 1890.

This is to certify that the within and foregoing is a true and correct copy of an original document on file in the office with commitment papers of convice Michael Schwab.

GALLUS MÜLLER,
Clerk Ill. State Penetentiary.

17 EXHIBIT B.

STATE OF ILLINOIS, EXECUTIVE OFFICE,
SPRINGFIELD, *November 10th*, 1887.

Maj. R. W. McClaughry, warden Illinois State penitentiary, Joliet, Illinois.

SIR: I have this day commuted the sentence of Samuel Fielden and Michael Schwab, under the sentence, at the June term, A. D. 1887, of the criminal court of Cook county, of death, to be hanged for the crime of murder, to imprisonment of the said Samuel Fielden and Michael Schwab in the penitentiary for life.

The commutation papers will this day be forwarded by me to the sheriff of Cook county, Illinois, directed to Canute R. Matson, sheriff of said county, with instructions to him to deliver said Fielden and Schwab into your custody as warden of the Illinois penitentiary at Joliet, together with the commutation papers in each case. You will receive the said Samuel Fielden and Michael Schwab, as warden of said penitentiary, into your custody, whereby under said commutation you are hereby directed to receive said Samuel Fielden and Michael Schwab into your custody as warden of said penitentiary, and to confine the said Fielden and Schwab in said penitentiary, in safe and secure custody and keeping, at hard labor during the term of their natural lives.

The said commutation papers would have been sent, as is usual, directly to you. I desired, however, that the sheriff might
18 temporarily have said papers in his possession on the day when said Fielden and Schwab, with several other persons named in said sentence which was pronounced against them, were to be executed on the 11th day of November, 1887, that he might be able by said papers to show why the sentence of said Samuel Fielden and Michael Schwab was not carried into execution, as pronounced by said court against them.

Yours respectfully, R. J. OGLESBY.

WARDEN'S OFFICE, ILLINOIS STATE PENITENTIARY,
JOLIET, *May 2d*, 1890.

This is to certify that the within and foregoing is a true and correct copy of an original document on file in this office with commutation papers of convict Michael Schwab.

GALLA MULLER,
Clerk Illinois State Penetentiary.

19 EXHIBIT "C."

At a supreme court begun and held at Ottawa on Tuesday, the 6th day of September, in the year of our Lord one thousand eight hundred and eighty-seven, within and for the northern grand division of the State of Illinois.

Present: Benj. R. Sheldon, chief justice; John M. Scott, justice;

John H. Mulkey, justice; Simeon P. Shope, justice; John Schofield, justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; George Hunt, attorney general; Lawrence Morrissy, sheriff; Alfred H. Taylor, clerk.

WEDNESDAY, *September* 14.

Present: Full bench, except Mr. Justice Scott.

Be it remembered that afterwards, to wit, on the 14th day of September, A. D. 1887 (the same being one of the regular days of said term of court), the following proceedings were by said court had and entered of record, to wit:

AUGUST SPIES, MICHAEL SCHWAB, SAMUEL Fielden, Albert R. Parsons, Adolph Fischer, George Engel, Louis Lingg, and Oscar W. Neebe *vs.* THE PEOPLE OF THE STATE OF ILLINOIS.	59, A. D. Error to the Criminal Court of Cook County.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the
20 premises, for that it appears to the court now here that neither in the record nor proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that that record is no error:

Therefore it is considered by the court that the judgment aforesaid be affirmed in all things as to each and every of said plaintiffs in error and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further ordered by the court that the eleventh day of November, A. D. 1887, be, and the same is hereby, fixed as the time when the sentence of death pronounced upon said plaintiffs in error, August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel, and Louis Lingg, by the criminal court of Cook county, Illinois, shall be executed.

And it is further ordered by the court that the sheriff of Cook county, Illinois, be, and he is hereby, ordered and directed to carry into execution the sentence by the criminal court of Cook county, Illinois, of the defendants in the indictment, August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel, and Louis Lingg, on Friday, the eleventh day of November next (November 11, A. D. 1887), between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of that day.

And it is further considered by the court that the said defendants in error recover of and from the said plaintiffs in error their costs by them in this behalf expended, and that they have execution therefor.

21 STATE OF ILLINOIS, *ss:*

Supreme Court, Northern Grand Division.

I, Alfred H. Taylor, clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the final order in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Ottawa, this 12th day of November, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal of Supreme Court.]

(Sig.) A. H. TAYLOR,
Clerk of the Supreme Court.

WARDEN'S OFFICE, ILLINOIS STATE PENITENTIARY,
JOLIET, *May 21st*, 1890.

This is to certify that the within and foregoing is a true and correct copy of an original document on file in this office with commitment papers of convict Michael Schwab.

GALLA MÜLLER,
Clerk Illinois State Penetentiary.

(Endorsed:) Filed Sept. 25, 1890. Wm. H. Bradley, clerk. Refiled Oct. 7, 1890. Wm. H. Bradley, clerk.

22 On the same day, to wit, on the twenty-fifth day of September, 1890, came the petitioner, by his attorney, and filed in said clerk's office his notice of motion in said entitled cause; which said notice, together with the affidavits of service thereto attached, *are* in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the Northern District of Illinois. —— Term, A. D. 1890.

In the Matter of the Petition for *Habeas Corpus* of MICHAEL SCHWAB.

To the Honorable George Hunt, attorney general of the State of Illinois, and A. W. Berggren, Esq., warden of the Illinois penetentiary at Joliet.

GENTLEMEN: Please take notice that on Monday, the 29th day of September, A. D. 1890, at ten o'clock a. m., or as soon thereafter as counsel may be heard, we shall, before his honor Walter Q. Gresham, judge of said court, at the court-room usually occupied by said judge, at the city of Chicago, county of Cook, and State of Illinois, move the court to allow the prayer of the petition for the issuing of a writ of *habeas corpus* directed to A. W. Berggren, warden of the peniten-

tiary, at which time and place you can appear, if you see fit, and show cause, if any you have, why said writ should not issue.

Yours respectfully, M. SALOMON,
Attorney for Petitioner.

23 BENJ. F. BUTLER,
Of Counsel.

Dated Chicago, September 25th, A. D. 1890.

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court Thereof for the Northern District Thereof.

Moses Salomon, being on oath first duly sworn, deposes and says that he served the foregoing notice by mailing a copy to each of said parties, to wit, Geo. Hunt, Springfield, Ill., and A. W. Berggren, Joliet, Ill., on the 25th day of September, A. D. 1890; and further affiant saith not.

MOSES SALOMON.

Subscribed and sworn to before me this 25th day of September, A. D. 1890.

HENRY MEISELBAR,
[SEAL.] *Notary Public.*

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the Northern District of Illinois Thereof.

In the Matter of the Petition of *Habeas Corpus* of MICHAEL SCHWAB.

To the Hon. George Hunt, attorney general of the State of Illinois:

Please take notice that on Monday, the 29th day of September, A. D. 1890, at ten o'clock a. m., or as soon thereafter as counsel can be heard, we shall, before his honor Walter Q. Gresham, judge of the said court, at the court-room usually occupied by said judge, in the city of Chicago, county of Cook, and State of Illinois, move the court to grant the prayer of the petitioner, to be filed in said court,
24 and a copy of which said petition is herewith served on you.

Dated Chicago, September 24th, A. D. 1890.

M. SALOMON,
Attorneys for Petitioner.
BENJ. F. BUTLER,
Of Counsel.

John Imbs, being on oath first duly sworn, deposes and saith that he deposited in post office at Chicago, on Sept. 24, A. D. 1890, an enveloped addressed to Geo. Hunt, att'y general, Springfield, Ill., containing a copy of said petition for *habeas corpus* and a copy of the foregoing notice; that said letter was registered as No. 38807; and further affiant saith not.

JOHN IMBS.

Subscribed and sworn to before me this 25th day of September, A. D. 1890.

JOS. FELTWELL,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Sept. 25, 1890. Wm. H. Bradley, clerk.

25 Afterward, to wit, on the twenty-ninth day of September, 1890, came A. W. Berggren, warden of the penitentiary at Joliet, Illinois, by George Hunt, attorney general of said State, and filed in said clerk's office his demurrer to the petition in said entitled cause; which demurrer was refiled October seventh, 1890, by leave of court. Said demurrer is in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Illinois.

In Re MICHAEL SCHWAB.

Petition for Habeas Corpus.

Demurrer of attorney general to the petition.

Now comes George Hunt, attorney general of the State of Illinois, in behalf of A. W. Berggren, warden of the penitentiary of said State, at Joliet, Illinois, and says that *that* said petition of Michael Schwab praying for a writ of *habeas corpus*, directed to the said A. W. Berggren, commanding him forthwith to produce the body of the said petitioner before this honorable court, and the matters and things therein alleged and charged, in the manner and form as the same are therein alleged and charged, are uncertain, ambiguous, contradictory, and insufficient in law to maintain the prayer of said petition as therein set forth; and, for further and special cause of demurrer thereto, said attorney general says—

1. The petition is not signed by petitioner.
2. The petition is not verified by the affidavit of petitioner.
3. The petition does not contain a copy of the indictment, record of trial, or judgment of the criminal court of Cook county.

26 4. The petition shows that there are other facts relating to the claim or authority for the detention of the petitioner not set forth in the petition.

5. Petitioner does not inform the court as to the real cause of the detention, but only what Berggren claims concerning it.

6. The reasons given as to the alleged insufficiency and illegality of said detention relate solely to the character of a certain paper therein referred to and disclose no ground for the discharge of the petitioner.

7. The claim that the authority and detention are in violation of the laws and constitution of the State of Illinois is superfluous and immaterial and relates to a matter over which this court has no jurisdiction.

8. The allegation that the petitioner is not held by process running in the name of the people of the State of Illinois is immaterial.

9. The allegation that the supreme court of the State of Illinois had no jurisdiction of the person of petitioner is insufficient, in that the petition does not show in what manner the court obtained its pretended jurisdiction of the person.

10. The petition shows that the judgment of the supreme court referred to affirms the judgment of the criminal court, but does not show what the judgment of the criminal court is or upon what the same was rendered.

11. Denial of the truth of the record and the offer to prove its alleged falsity is an attempt to impeach the record of a court in a collateral proceeding by extraneous testimony.

12. The petition does not aver or show that the allegations, matters, and things therein set out are the entire and only claim
27 or authority upon which the said petitioner is detained.

13. The matters and things alleged in said petition do not disclose a case or present questions over which this court has any jurisdiction.

All which matters and things said attorney general is ready to verify.

Wherefore he prays judgment that said petition may be dismissed, with costs to the respondent in this behalf expended.

GEO. HUNT,
Attorney General.

(Endorsed:) Filed Sept. 29, 1890. Wm. H. Bradley, clerk. Refiled Oct. 7, 1890. Wm. H. Bradley, clerk.

28 On the same day, to wit, on the twenty-ninth day of September, in the July term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

In the Matter of the Petition of MICHAEL SCHWAB for a Writ of *Habeas Corpus.*

Now comes said petitioner, Michael Schwab, by Moses Salomon, Esq., his attorney, and now comes also the respondent, A. W. Berggren, warden of the penitentiary of the State of Illinois, at Joliet, in said State, by George Hunt, attorney general of said State; and now comes on to be heard the demurrer of the respondent to said petition, and, after hearing the arguments of the respective counsel, the court takes the same under advisement; and on motion of said petitioner, by his attorney, leave is given him to amend his said petition.

Afterwards, to wit, on the seventh day of October, 1890, came the petitioner, by his attorney, and filed in said clerk's office his amendment to the petition in said entitled cause; which said amendment is in the words and figures following, to wit:

29 UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the Northern District of Illinois. July Term, A. D. 1890.

Petition of MICHAEL SCHWAB for *Habeas Corpus* } 21739, 522.
vs.
A. W. BERGGREN.

And now comes the petitioner, Michael Schwab, by his counsel, Benjamin F. Butler and Moses Salomon, and, by leave of court first had and obtained herein, amends the petition by attaching thereto the signature of petitioner, Michael Schwab, signed by himself, and further amends said petition by attaching thereto the affidavit of said Michael Schwab, signed by himself.

M. SALOMON,
Attorney for Petitioner.

BENJ. F. BUTLER, *Of Counsel.*

(Endorsed:) Filed Oct. 7, 1890. Wm. H. Bradley, clerk.

30 On the same day, to wit, on the seventh day of October, in the adjourned October term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Judgment.

In the Matter of the Petition of MICHAEL SCHWAB for a Writ of *Habeas Corpus.*

Now comes said petitioner, Michael Schwab, by Moses Salomon, Esq., his attorney, and, having amended his petition herein under the leave heretofore given, leave is now given him to refile the same; and thereupon leave is given the respondent, A. W. Berggren, warden of the penitentiary of the State of Illinois, at Joliet, in said State, to refile his demurrer to the original petition to said petition as amended; and the court, having considered and being now fully advised upon said demurrer, sustains the same and orders that said petition as amended be dismissed at the costs of said petitioner, and that execution issue therefor.

And thereupon said petitioner prays an appeal to the supreme court, which is allowed upon filing a bond in the penal sum of five hundred dollars, with surety to be approved by the clerk.

31 Afterward, to wit, on the eleventh day of October, 1890, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, Michael Schwab and Henry Linnemeyer, are held and firmly bound unto A. W. Berg-

gren in the full and just sum of five hundred dollars, to be paid to the said A. W. Berggren or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eleventh day of October, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in said court between Michael Schwab, petitioner, for a writ of *habeas corpus* to issue to A. W. Berggren, warden of the penitentiary of Illinois, at Joliet, Will county, Illinois, a final order or judgment was rendered against the said Michael Schwab dismissing his said petition; and the said Michael Schwab having prayed and obtained an appeal to reverse the order or judgment in the aforesaid suit:

Now, the condition of the above obligation is such that if the said Michael Schwab shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

32 Sealed and delivered in presence of—

MICHAEL SCHWAB, [SEAL.]
By M. SALOMON, *His Att'y.* [SEAL.]
HENRY LINNEMEYER. [SEAL.]

Approved by—
WM. H. BRADLEY, *Clerk,*
By E. A. DRUMMOND, *Dep'ty Clerk.*

(Endorsed:) Filed Oct. 11, 1890. Wm. H. Bardley, clerk.

33 Afterward, to wit, on the twenty-ninth day of October, 1890, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA, *ss:*

In the Circuit Court of the United States for the Northern District of Ill.

MICHAEL SCHWAB
vs.
A. W. BERGREN.

It is hereby stipulated and agreed that the petition may be amended by inserting after the letter "C," on page 1 of said petition, the letter "D," and also attaching a certified copy of the judgment of the criminal court of Cook county, same to be endorsed "Exhibit D."

M. SALOMON,
Attorney for Petitioner.
GEO. HUNT,
Attorney for A. W. Berggren, Warden of State Penitentiary, Joliet, Illinois.

(Endorsed:) Filed Oct. 29, 1890. Wm. H. Bradley, clerk.

34 On the same day, to wit, on the twenty-ninth day of October, 1890, there was filed in said clerk's office a certified copy of judgment from the criminal court of Cook county, Illinois, marked Exhibit "D," in said entitled cause; which said certified copy is in the words and figures following, to wit:

EXHIBIT "D."

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

Pleas before a branch of the criminal court of Cook county, in said county and State, at a term thereof begun and held at the criminal court house, in the city of Chicago, in said county, on the first Monday (being the fourth day) of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

Present: Honorable Joseph E. Gary, judge of the superior court of Cook county and *ex officio* judge of the criminal court of Cook county; Julius S. Grinnell, State's attorney; Seth F. Hanchett, sheriff of Cook county.

Attest: JOHN STEPHENS, *Clerk.*

Be it remembered, to wit, on the ninth day of October, in the year last aforesaid, it being the term of court aforesaid, the following, among other, proceedings were had and entered of record in
35 said court; which said proceedings are in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS } 18803. Indictment for
vs. Murder.
MICHAEL SCHWAB, Impl'd, etc. }

This day again come the said people, by Julius S. Grinnell, State's attorney, and the said defendant, as well in his own proper person as by his aforesaid counsel, also comes; and now, neither the said defendant nor his counsel for him saying anything further why the judgment of the court should not now be pronounced against him on the verdict of guilty heretofore rendered to the indictment in this cause—

Therefore it is ordered and adjudged by the court that the said defendant, Michael Schwab, be taken from the bar of the court to the common jail of Cook county, from whence he came, and be confined in said jail in safe and secure custody until the third day of December, A. D. 1886, and that on said third day of December, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon, the said defendant, Michael Schwab, be by the sheriff of Cook county, according to law, within the walls of said jail or in a yard or enclosure adjoining the same, hanged by the neck until he

is dead, and the said sheriff is hereby required and commanded to take the body of the said defendant, Michael Schwab, and
36 confine him in the said common jail of Cook county in such safe and secure custody, and upon the said third day of December, A. D. 1886, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon, to hang the said defendant, Michael Schwab, by the neck until he be dead.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, James H. Gilbert, clerk of the criminal court of Cook county, in said county and State, do hereby certify the above and foregoing to be a true, perfect, and complete copy of an order entered of record in a certain cause lately pending in said court, wherein The People of the State of Illinois were plaintiffs and Michael Schwab, impl'd, &c., defendant.

Seal Criminal Court, Cook County, Illinois.

Witness James H. Gilbert, clerk of said court, and the seal thereof, at Chicago, in said county, this 5th day of November, A. D. 1887.

(Sig.) JAMES H. GILBERT, *Clerk.*

ILLINOIS STATE PENITENTIARY,
WARDEN'S OFFICE, JOLIET, *October* 4, 1890.

This is to certify that the above and foregoing has been carefully compared with and is a true and correct copy of an original final order of the criminal court of Cook county on file in this office *In re* "The People of the State of Illinois *vs.* Michael Schwab."

A. W. BERGGREN, *Warden.*

37 (Endorsed:) Filed Oct. 29, 1890. Wm. H. Bradley, clerk.

38 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the matter of the petition of Michael Schwab for a writ of *habeas corpus* as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this thirtieth day of October, 1890.

WM. H. BRADLEY, *Clerk.*

39 UNITED STATES OF AMERICA:

In the Supreme Court of the United States. October Term, A. D. 1890.

In the Matter of the Petition of MICHAEL SCHWAB for a Writ of *Habeas Corpus*, to be Directed to A. W. Berggren, Warden of the Penitentiary at Joliet, Will County, in the State of Illinois.

Appeal from the circuit court of the United States of America for the northern district of Illinois—Hon. Walter Q. Gresham, judge, presiding.

Assignment of Errors.

And now comes Michael Schwab, appellant, in his own proper person, and by his attorneys, Benjamin F. Butler and Moses Salomon, complains and says that in the record and proceedings there is manifest and material error, and appellant prays to have the judgment of the circuit court in this behalf reversed and set aside and held for nought.

40 Appellant further says that the action of the said circuit court was erroneous in the following particulars, to wit:

I.

The court erred in dismissing appellant's petition for a writ of *habeas corpus*.

II.

The court erred in sustaining the demurrer filed by the attorney general, as the prayer of the petition did not ask that the writ of *habeas corpus* be directed to him.

III.

The court erred in not requiring a return to be filed by A. W. Berggren, warden of the penitentiary at Joliet, in whose custody the petitioner is confined.

IV.

The court erred in sustaining the demurrer to the petition.

V.

The court erred in failing and refusing to discharge the petitioner, appellant herein, from the custody of said A. W. Berggren, warden of the penitentiary.

VI.

The petition discloses that the appellant, petitioner herein, is held and detained in custody without warrant or authority of law, in violation of the laws and the Constitution of the United States, and

the court erred in failing and refusing to discharge from custody the petitioner.

41 VII.

The petition filed by appellant in the circuit court discloses that the petitioner was sentenced to death by the supreme court of the State of Illinois in the absence of the petitioner, without his fault, which said sentence of death is one of the claims of authority under which said warden imprisons and detains the petitioner, and the fact that petitioner was not present when sentence of death was pronounced upon him by the supreme court of the State of Illinois is admitted by the demurrer filed herein, and the circuit court therefore erred in failing to hold that said sentence of death so pronounced by the supreme court of the State of Illinois was null and void, and constitutted no authority to A. W. Berggren, warden of the penitentiary at Joliet, for detaining and imprisoning the petitioner.

VIII.

The circuit court of the United States erred in failing and refusing to hold that the sentence of death passed by the supreme court of the State of Illinois in the admitted absence of the petitioner, Michael Schwab, was null and void.

IX.

The circuit court of the United States erred in holding that the commutation of the Governor of the State of Illinois constituted a good and sufficient authority to A. W. Berggren, warden of the penitentiary at Joliet, for the detention and imprisonment of the petitioner.

42 X.

The court erred in refusing to discharge the petitioner, Michael Schwab, from detention and confinement by A. W. Berggren in the penitentiary at Joliet, such detention being under and by virtue of the commutation of the Governor of the State of Illinois, and in violation of the laws and Constitution of the United States.

XI.

There is other manifest and material error in the record.

Wherefore appellant prays that the judgment of the circuit court of the United States in sustaining the demurrer to said petition and in failing and refusing to require an answer to said petition, and also the judgment of said circuit court in failing and refusing to discharge petitioner from confinement and custody of A. W. Berggren, and also the judgment of said circuit court in denying the prayer of the said petition and dismissing the petition filed herein by the petitioner, Michael Schwab, may be set aside and held for nought, and that an order may be entered by this honorable court ordering and directing the discharge of petitioner from the custody

of said Berggren, and that he be set at liberty; and this appellant will ever pray.

MICHAEL SCHWAB,
By M. SALOMON,
His Attorney.
M. SALOMON,
Attorney for Appellant.

BENJ. F. BUTLER, *Of Counsel.*

Endorsed on cover: N. Illinois C. C. U. S. No. 1552. Michael Schwab, appellant, *vs.* A. W. Berggren, warden of the penitentiary of the State of Illinois at Joliet. Filed November 10, 1890.